IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN C. ASKEY, Plaintiff, v. LINCOLN COUNTY SHERIFF'S OFFICE, MISSOURI, Issue summons to Sheriff of St. Charles County Serve: John Cottle, Sheriff 65 Business Park Drive Troy, MO 63379 and JOHN & JANE DOES LINCOLN COUNTY SHERIFF'S OFFICE, MISSOURI, EMPLOYEES 1-10 Defendants.	)	Case No: **JURY TRIAL DEMANDED**

COMPLAINT

COMES NOW Plaintiff John C. Askey, by and through his attorney, and for his cause of action against Defendants states and alleges as follows:

THE PARTIES

1. Plaintiff John C. Askey (hereinafter individually referred to as "Plaintiff") is, and was at all times relevant hereto, a citizen of City of O'Fallon, County of St. Charles and State of Missouri.

2. Defendant Lincoln County Sheriff's Office, Missouri ("Lincoln County Sheriff") is a sheriff department duly formed and existing under the laws of the State of Missouri and operating within the Eastern District of Missouri.

3. On information and belief, Defendants John and Jane Does of the Lincoln County Sheriff (identified as 1-10 John and Jane Does) are citizens of the State of Missouri and government employees, and therefore can be, and are sued for actions undertaken in their official governmental capacity.

JURISDICTION AND VENUE

4. This court has jurisdiction over the Plaintiff's federal claims pursuant to 28 USC §1331 and over her State law claims pursuant to 28 USC §1367(a).

5. The Eastern District of Missouri is the appropriate venue under 28 USC §1391(b)(2) because a significant portion of the events and admissions giving rise to the claims herein occurred in this district.

FACTS

6. Beginning in approximately January, 2012, Leah L. Askey in her role as Prosecuting Attorney became involved in the prosecution of murder charges against Russell Faria.

7. After obtaining a conviction in November, 2013, the verdict was appealed to the Missouri Court of Appeals, Eastern District.

8. On or about February 24, 2015, the Missouri Court of Appeals, Eastern District entered an order granting Russell Faria's Motion to Remand to file a Motion for New Trial based on newly discovered evidence.

9. The Appellate Court cited *inter alia* that Leah L. Askey was allegedly involved in a romantic relationship with one of the police officers who testified at trial for the State as part of its reasoning for granting Mr. Faria's motion.

10. In the Fall of 2014, Plaintiff provided his son with a smart phone which Plaintiff had previously used as his own for purposes of communicating with his children while in the care and custody of Leah L. Askey.

11. Prior to providing the phone to his son, Plaintiff completed a factory reset to the smart phone removing any and all messages, data, texts, e-mails and all personal information.

12. Plaintiff and his son created a password for the phone so that it would be secure from others, including Leah L. Askey.

13. Upon information and belief, Leah L. Askey became concerned about what information Plaintiff had regarding the alleged relationship between Leah L. Askey and the police officer who testified at trial in the Faria murder case.

14. Upon information and belief, Leah L. Askey wanted information from Plaintiff regarding his communications with counsel for Russell Faria, documentation regarding the alleged affair and any other communications Plaintiff may have which would support Leah L. Askey's public assertions that her conduct during the Russell Faria murder investigation and trial were proper and ethical.

15. Leah L. Askey took possession of the smart phone given to her son by Plaintiff without consent of Plaintiff.

16. Upon information and belief, Leah L. Askey demanded and forced the minor child to provide her with the security code to allow her access to the smart phone for the purpose of invading Plaintiff's information and data.

17. Upon information and belief, Leah L. Askey while in possession of the smart phone conspired with a third party or utilized her professional contacts to assist her with performing a data extraction to obtain personal and private information of Plaintiff.

18. The result of Leah L. Askey's actions provided her access to Plaintiff's private data, communication, text messages, e-mail exchanges and all other data previously deleted from the smart phone.

19. The information obtained by Leah L. Askey was Plaintiff's personal and private information which Plaintiff intended to remain private. Plaintiff had a right to keep this information private and took steps to maintain that privacy by completing the factory reset on the smart phone.

20. Upon Plaintiff's best knowledge and belief, sometime in 2014-2015, certain unknown agents of Lincoln County Sheriff, while acting in their capacity as deputy sheriffs for the Lincoln County Sheriff, unlawfully accessed said cell-phone owned by, registered to, and whose bill was paid for by Plaintiff (hereinafter "Plaintiff's Cell Phone") seeking to obtain private communications stored therein.

21. At no time was Plaintiff under official investigation by the Lincoln County Sheriff or any public authorities upon any grounds whatsoever, nor detained pursuant to a valid custodial arrest and at no time did the any deputy or agent of the Lincoln County Sheriff have express or constructive authorization on the part of Plaintiff to access this information stored on Plaintiff's Cell Phone.

22. Upon information and belief, at some point in or around 2014-2015, an agent (or agents) associated with the Police of the Lincoln County Sheriff compiled information from Plaintiff's Cell Phone obtained without authorization, and while in uniform, provided it to

various other defendant Jane and John Does and accessed the Plaintiff's Cell Phone directly and took possession of said cell phone. Any such possession and access to Plaintiff's Cell Phone was done without permission of Plaintiff and taken without any permission from the Plaintiff. Furthermore, it is believed that the John and Jane Doe employees provided information unlawfully obtained from Plaintiff's Cell Phone and may have provided same unlawfully obtained information to other police agencies or law enforcement agencies.

23. These Defendants Jane and John Does of the Lincoln County Sheriff employees then utilized this improperly obtained information to contact various persons in order to embarrass and institute investigations into Plaintiff and Plaintiff's private matters in an attempt to adversely affect him. In addition, said Defendants John and Jane Does utilized said illegally obtained information to threaten and harass the Plaintiff. Plaintiff's acquaintances were harassed and unlawfully investigated on the basis of unlawfully obtained information obtained from Plaintiff's Cell Phone. The accessing of the private phone information and subsequent actions by certain John and Jane Does was done with personal and ulterior motives and upon information and belief in conjunction with and conspiring with Leah L. Askey to adversely affect the Plaintiff's reputation and his relationships with his acquaintances. That certain Jane Doe and John Doe employees had close relationships with Leah L. Askey.

24. Plaintiff's multiple attempts to discover how these various Jane Doe and John Doe Defendants and Leah L. Askey employees obtained access to the private communications stored on Plaintiff's Cell Phone or who accessed the private communications to date and who took possession of the phone, have not fully been divulged to Plaintiff herein.

25. To Plaintiff's best knowledge and belief, John and Jane Does "transcribed" and disseminated certain electronic communications taken from Plaintiff's Cell Phone in violation of Plaintiff's statutory, constitutional and privacy rights.

26. As a result of this transcription, dissemination and publication of the illegally obtained phone records, Plaintiff claims that numerous employees of Defendant Lincoln County Sheriff allowed to view said illegally obtained private communications of Plaintiff who has felt threatened by their contents and said publication was designed by certain Jane and John Does to ruin and disparage the reputation of Plaintiff herein.

CLAIMS FOR RELIEF

FEDERAL LAW

COUNT I – ILLEGAL SEARCH & SEIZURE UNDER THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION – DEFENDANTS JANE AND JOHN DOE, LINCOLN COUNTY SHERIFF EMPLOYEES 1-10 IN THEIR INDIVIDUAL CAPACITIES

27. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 26 inclusive, as if fully set forth herein.

28. Defendants Jane and John Does of the Lincoln County Sheriff as employees of the Defendant Lincoln County Sheriff at all relevant times had a legal obligation not to violate the constitutional rights of Plaintiff while said Defendants were employed by the Lincoln County Sheriff accessed the Plaintiff's Cell Phone and the contents of Plaintiff's Cell Phone without authorization, express or implied.

29. At the time of its inception, the action of accessing Plaintiff's Cell Phone in question was not justified, because Defendants Jane and John Does of the Lincoln County Sheriff had no basis for sufficient probable cause to conduct said search.

30. At the time of access, the search in question was not reasonably related in scope to the circumstances which ostensibly justified the interference in the first place, because it was excessively intrusive in light of the circumstances.

31. Plaintiff has a reasonable expectation of privacy in the context of the private text

messages on Plaintiff's Cell Phone.

32. As a result of having no lawful basis to access Plaintiff's Cell Phone, and because Plaintiff had a reasonable expectation of privacy in the communications in question, Defendants Jane and John Doe Lincoln County Sheriff employees 1-10 violated Plaintiff's federal Fourth Amendment right to be free from illegal searches and seizures.

33. As a result of these actions, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff John C. Askey, respectfully prays this Court enter judgment:

a) In favor of Plaintiff for compensatory damages against all Defendants Jane and John Doe Lincoln County Sheriff employees 1-10;

b) In favor of Plaintiff for punitive damages against Defendant Jane and John Doe Lincoln County Sheriff employees 1-10;

c) In favor of Plaintiff for the cost of this lawsuit and attorney's fees and expenses pursuant to 42 USC §1988; and

d) For any other relief this Court deems just and proper.

COUNT II – ILLEGAL SEARCH & SEIZURE UNDER THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION – DEFENDANT LINCOLN COUNTY SHERIFF

34. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 33 inclusive, as if fully set forth herein.

35. Defendants Jane and John Does of the Lincoln County Sheriff employees 1-10, at all relevant times had a legal obligation not to violate the constitutional rights of Plaintiff while

acting in their official capacity.

36. Defendants Jane and John Does of the Lincoln County Sheriff employees 1-10 accessed the contents of Plaintiff's Cell Phone without sufficient probable cause to legitimate the search in question, and in an excessively intrusive manner that far exceeded the reasonable scope of inquiry under the circumstances.

37. Defendants Jane and John Does of the Lincoln County Sheriff employees 1-10 accessed of the information in question was entirely unauthorized by Plaintiff, and Plaintiff had a reasonable expectation of privacy in these circumstances.

38. Lincoln County Sheriff employees searching the possessions of Plaintiff's Cell Phone constitutes action taken under color of official authority for the purpose of entity liability.

39. Various Lincoln County Sheriff employees in positions of final policy-making authority either instigated the improper accessing and downloading of Plaintiff's private stored electronic communications for the purposes of establishing a "custom, practice, or policy" under 42 USC §1983, or ratified these actions subsequently.

40. Defendants Jane and John Doe Lincoln County Sheriff employees 1-10 actions violated Plaintiff's Fourth Amendment rights under the U.S. Constitution undertaken while in positions of final policy making authority, or, alternatively, their subsequent ratification of said actions, gives rise to Municipal liability under 42 USC §1983.

41. As a result of these actions, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff, John C. Askey, respectfully prays this Court enter judgment:

a) In favor of Plaintiff for compensatory damages against Defendant Lincoln County Sheriff;

b) In favor of Plaintiff for punitive damages against Defendant Lincoln County Sheriff;

c) In favor of Plaintiff for the cost of this lawsuit and attorney's fees and expenses pursuant to 42 USC §1988; and

d) For any other relief this Court deems just and proper.

COUNT III – VIOLATION OF THE STORED COMMUNICATIONS ACT 18 U.S.C. § 2701 AND 42 U.S.C. § 1983 – DEFENDANTS JANE AND JOHN DOE LINCOLN COUNTY SHERIFF EMPLOYEES 1-10 OF THE LINCOLN COUNTY SHERIFF IN THEIR INDIVIDUAL CAPACITIES

42. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 41 inclusive, as if fully set forth herein.

43. Defendants Jane and John Does of the Lincoln County Sheriff employees 1-10 intentionally accessed Plaintiff's Cell Phone, including but not limited to emails and text messages in the course of their employment and their regular duties therein, bringing their actions under the color of official authority.

44. Various forms of data stored on a cell phone, including but not limited text messages and emails, are electronic communications under the Stored Communications Acts.

45. Emails and text messages are electronic communications that are transmitted via an electronic communications service for purposes of the Stored Communications Act.

46. Emails and text messages are communications in Electronic Storage for purposes of the Stored Communications Act.

47. The accessed communications in question were not accessible to the general public.

48. Defendants Jane and John Does of the Lincoln County Sheriff employees 1-10's intentionally access was not authorized either explicitly or constructively by any party in a position to grant such authorization.

49. Defendants Jane and John Does of the Lincoln County Sheriff employees 1-10's intentional access of these stored electronic communications under the color of official authority gives rise to individual liability under 42 U.S.C. § 1983.

50. As a result of these actions, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff John C. Askey, respectfully prays this Court enter judgment:

a) In favor of Plaintiff for compensatory damages against Defendants Jane and John Doe Lincoln County Sheriff employees 1-10;

b) In favor of Plaintiff for punitive damages against Defendants Jane and John Doe Lincoln County Sheriff employees 1-10;

c) In favor of Plaintiff for statutory damages against Defendants Jane and John Doe Lincoln County Sheriff employees 1-10;

d) In favor Plaintiff for the cost of this lawsuit and attorney's fees and expenses pursuant to 42 USC §1988; and

e) For any other relief this Court deems just and proper.

COUNT IV – ENTITY LIABILITY UNDER 42 U.S.C. §1983 FOR VIOLATION OF THE STORED COMMUNICATIONS ACT 18 U.S.C. §2701 – DEFENDANT LINCOLN COUNTY SHERIFF

51. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 50 inclusive, as if fully set forth herein.

52. Various Lincoln County Sheriff employees in positions of final policy-making authority either instigated the improper accessing and download of Plaintiff's private stored electronic communications, or ratified these actions subsequently in cooperation with Leah L. Askey.

53. The actions of these various Lincoln County Sheriff employees in violating Plaintiff's rights under the Stored Communications Act while in a position of final policy making authority, or alternatively, their subsequent ratification of them, gives rise to Municipal liability under 42 USC §1983.

54. As a result of these actions, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff John C. Askey, respectfully prays this Court enter judgment:

a) In favor of Plaintiff for compensatory damages against Defendant Lincoln County Sheriff;

b) In favor of Plaintiff for punitive damages against Defendant Lincoln County Sheriff;

c) In favor of Plaintiff for statutory damages against Defendant Lincoln County Sheriff;

d) In favor of Plaintiff for the cost of this lawsuit and attorney's fees and expenses pursuant to 42 USC §1988; and

e) For any other relief this Court deems just and proper.

COUNT V – INSTRUSION UPON SECLUSION – DEFENDANTS JANE & JOHN DOE LINCOLN COUNTY SHERIFF EMPLOYEES 1-10

55. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 54 inclusive, as if fully set forth herein.

56. In or about 2015, Defendants Jane and John Does of the Lincoln County Sheriff employees accessed, transcribed, and publicly disseminated the contents of various private communications unlawfully obtained from Plaintiff's Cell Phone in cooperation with Leah L. Askey.

57. This intrusion into the private communications of Plaintiff was entirely unauthorized.

58. The intrusion into the private communications of Plaintiff was entirely unauthorized.

59. This intrusion concerned entirely private matters.

60. As a result of this intrusion, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff John C. Askey, respectfully prays this Court enter judgment against Defendants Jane and John Doe Lincoln County Sheriff employees 1-10 for actual and punitive damages as permitted by statute, attorney's fees and expenses, together with her court costs and any and all such further relief the Court deems just and proper.

COUNT VI – INTRUSION UPON SECLUSION – DEFENDANT LINCOLN COUNTY SHERIFF

61. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 60 inclusive, as if fully set forth herein.

62. In or about 2014-2015, Defendants Jane and John Doe Lincoln County Sheriff employees accessed, transcribed, and utilized in various fashions the contents of various private communications unlawfully obtained from Plaintiff's Cell Phone in cooperation with Leah L. Askey.

63. This intrusion into the private communications of Plaintiff was entirely unauthorized.

64. The intrusion into Plaintiff's private communications at issue here would be offensive and/or objectionable to a reasonable person.

65. This intrusion concerned entirely private matters.

66. No exemptions to either municipal or employee liability under the Tort Immunity Act apply.

67. As a result of this intrusion, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff John C. Askey, respectfully prays this Court enter judgment against Defendant Lincoln County Sheriff for actual and punitive damages as may be permitted by statute, attorney's fees and expenses, together with her court costs and any and all such further relief the Court deems just and proper.

COUNT VII – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

DEFENDANTS JANE & JOHN DOE LINCOLN COUNTY SHERIFF EMPLOYEES 1-10

68. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 67 inclusive, as if fully set forth herein.

69. Various Lincoln County Sheriff employees engaged in extreme and outrageous conduct directed towards Plaintiff, including but not limited to: unlawfully utilizing the aforementioned obtained, investigating Plaintiff's private life and interviewing Plaintiff's acquaintances and family.

70. These Defendants knew or should have known their actions to be lacking a good faith basis in fact, but committed them anyway, in conspiracy with and cooperation with Leah L. Askey, giving rise minimally to a high probability that their conduct would inflict severe emotional distress, if they did not also actively intend to inflict such severe emotional distress.

71. As a result of these various forms of conduct on the part of various Lincoln County Sheriff employees. Plaintiff did in fact suffer severe emotional distress, in his personal life.

72. As a result of these actions, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff, John C. Askey, respectfully prays this Court enter judgment against Defendants Jane and John Doe Lincoln County Sheriff employees 1-10 for actual punitive damages as permitted by statute, attorney's fees and expenses, together with her court costs and any and all such further relief the Court deem just and proper.

COUNT VIII – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – DEFENDANT LINCOLN COUNTY SHERIFF

73. Plaintiff adopts and incorporates by reference all preceding paragraphs of this Complaint, 1 through 72 inclusive, as if fully set forth herein.

74. In or about 2014-2015, Defendants Jane and John Does of the Lincoln County Sheriff employees perpetrated or conspired to perpetrate various actions whose intent was to inflict sever emotional distress upon Plaintiff including but not limited to: unlawfully utilizing the aforementioned obtained, investigating Plaintiff's private life and interviewing Plaintiff's acquaintances and family.

75. As a result of this intrusion, Plaintiff sustained various forms of emotional distress damages and loss of reputation.

76. As a result of these actions, Plaintiff sustained various forms of financial and emotional damages and loss of reputation. As a direct and proximate result of the aforementioned actions, Plaintiff was injured and damaged in an amount to be determined by a jury.

WHEREFORE, Plaintiff, John C. Askey, respectfully prays this Court enter judgment against Defendant Lincoln County Sheriff for actual and punitive damages as may be permitted by statute, attorney's fees and expenses, together with her court costs and any and all such further relief the Court deems just and proper.

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